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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,988	07/16/2003	Ron Everett	030353	8827

67524 7590 05/15/2007
FOX ROTHSCHILD, LLP
625 LIBERTY AVENUE
PITTSBURGH, PA 15222-3155

EXAMINER

MYINT, DENNIS Y

ART UNIT	PAPER NUMBER
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2162

MAIL DATE	DELIVERY MODE
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05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary	Application No.	Applicant(s)	
	10/620,988	EVERETT, RON	
	Examiner	Art Unit	
	Dennis Myint	2162	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Dennis Myint. (3) Dennis M. Carleton (Applicant's Representative).
 (2) Cam Y. Truong (Primary Examiner). (4) _____.

Date of Interview: 09 May 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
 If Yes, brief description: _____.

Claim(s) discussed: 1.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

 Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

On May 9, 2007, Dennis M. Carleton, Applicant's Representative, initiated an interview. Citing the rejection of claim 1 under 35 U.S.C. 101, Applicant's Representative presented that data structure of claim 1 is functional because it is stored on a computer-readable medium in light of MPEP § 2106.1. Examiner replied that said data structure is data structure per se. and lacks any functional step(s) which manipulates said data structure and, as such, said data structure is non-functional descriptive material per se. Applicant's Representative strongly disagrees on this point. Applicant's Representative said the inventor will be consulted how to proceed with the application.

Dennis M. Carleton
✓ 08/10/2007

John E. Breene
JOHN BREENE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

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DATE: APRIL 23, 2007

FACSIMILE TRANSMITTAL SHEET

TO:	COMPANY:	FAX NUMBER:	PHONE NUMBER:
Dennis Myint	U.S.P.T.O.	571 273 5629	
FROM:	PHONE NUMBER:	EMAIL:	BILLING NUMBER:
Dennis M. Carleton	(412)	@foxrothschild.com	
NUMBER OF PAGES:	CHARGE FILE #:	PRIORITY:	LOG NUMBER:
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☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ FOR YOUR INFORMATION

NOTES/COMMENTS:

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April 23, 2007

VIA Facsimile (571) 273-5629

Dennis Myint
U.S. Patent and Trademark Office

Re: Phone conference regarding U.S. Application No. 10/620,988 (Everett) - § 101 Rejection

Dear Mr. Myint:

In response to your Office Action dated 04/06/07 in the above-referenced application, I wish to discuss your response to our previous arguments and your claim rejections under 35 U.S.C. § 101. In your rejection on page 4, paragraph 5, of the Office Action you state that the data structures are per say non-functional descriptive materials. This is counter to Office Policy as set forth in MPEP § 2106.01. You have classified the claimed invention as "a data structure", which is defined in 2106.01 as "a physical or logical relationship among data elements designed to support specific data manipulation functions." It also clearly states that data structures are to be considered functional descriptive material as opposed to non-functional descriptive material. Note that non-functional descriptive material includes music, literary works and data compilations. The data structures of the present invention clearly does not fall into one of these classes. 2106.01 further states that when functional descriptive material is recorded on some computer readable medium it becomes structurally and functionally interrelated to the medium and will be statutory. I believe your categorization of data structures as non-functional descriptive material is in error and find no support for your statement that data structures are per say non-functional descriptive material.

Please call to discuss. Thank you for your assistance.

Very truly yours,

Dennis M. Carleton

PT1 217461v1 04/17/07

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